

STATE OF MICHIGAN
IN THE SUPREME COURT

DONNA KROON-HARRIS,

Plaintiff-Appellee,

v

STATE OF MICHIGAN,

Defendant-Appellant.

Supreme Court Case No. 129689

Court of Appeals No. 261146

Court of Claims No. 04-78-MK

DEFENDANT-APPELLANT STATE OF
MICHIGAN'S SUPPLEMENTAL BRIEF
ON APPLICATION FOR LEAVE TO APPEAL

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CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

The Defendant-Appellant State of Michigan (Michigan) asks this Court to determine whether the Court of Claims has jurisdiction to review a final administrative decision concerning a State classified employee's eligibility for a compensation benefit granted by the Michigan Civil Service Commission. This Court should: decide this significant jurisdictional issue and peremptorily reverse the Court of Appeals' holding that Plaintiff-Appellee Donna Kroon-Harris's entitlement to long term disability benefits flows from a State contract; and, recognize that the Circuit Court, and not the Court of Claims, has jurisdiction to review an administrative decision denying such benefits.

There is no need to remand this case to the Court of Appeals for consideration of this question of law.¹ Moreover, this Court should dismiss this case because the Court of Claims lacked jurisdiction in the first instance.²

I. The Court of Claims Act must be harmonized with article 4, § 48 and article 11, § 5 of the Michigan Constitution.

The Court of Claims Act, MCL 600.6419, confers upon the Court of Claims exclusive jurisdiction to adjudicate contract claims against the State of Michigan.³ As Ms. Kroon-Harris points out, this Act "by law" deprives the circuit court of jurisdiction over contract claims against Michigan. (Pl's Br Opposing Def's Application for Leave to Appeal, p 7). In order for this Act to be constitutional—and it is presumed constitutional⁴—it must be harmonized with Const

¹ See *Griffin v Civil Service Comm*, 134 Mich App 413, 421 n 2; 351 NW2d 310 (1984).

² *Fox v Bd of Regents*, 375 Mich 238, 242; 134 NW2d 146 (1976) ("When a court is without jurisdiction of the subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void.")

³ MCL 600.6419. See also *Lim v Dep't of Transp*, 167 Mich App 751; 423 NW2d 343 (1988), *app den* 432 Mich 882 (1989).

⁴ See *Johnson v Kramer Bros Freight Lines, Inc*, 357 Mich 254, 257, 98 NW2d 586 (1959).

1963, art 4, § 48⁵ and Const 1963, art 11, § 5,⁶ the provisions that deal with classified civil service employment.⁷ The Act and these constitutional provisions cannot be harmonized unless this Court determines that the existing dispute does not involve a contract and the Court of Claims has no jurisdiction over claims challenging administrative decisions regarding the terms, conditions, and compensation of State classified civil service employment.

Plaintiff relies upon this Court's 1947 decision of *Farrell v Unemployment Compensation Commission*⁸ to support her argument that the Court of Claims has jurisdiction "to hear and determine claims for unpaid compensation." (Pl's Supplemental Brief Opposing Leave to Appeal, p 3). The claim for compensation for past services at issue in *Farrell* is readily distinguishable. The plaintiff in *Farrell* sought payment for services as a State employee rendered in 1940, before the citizens of this State adopted a constitutional amendment in 1941 to create the Civil Service Commission and in doing so granted it plenary authority.⁹ The Commission's duties remained the same when the Constitution was amended in 1963.¹⁰

Since *Farrell*, the Legislature's constitutional duties significantly changed. In 1940, the Legislature had constitutional authority to establish courts to resolve the type of complaint at issue in *Farrell*.¹¹ In 1963, the citizens adopted a new constitutional provision that limited the

⁵ Mich Const 1963, art 4, § 48 (Legislature may not enact laws for the resolution of disputes concerning public employees in the State classified civil service).

⁶ Mich Const 1963, art 11, § 5 (Civil Service Commission has plenary authority over all terms and conditions of classified civil service employment).

⁷ See *Straus v Governor*, 459 Mich 526, 533; 592 NW2d 53 (1999) (where constitutional provisions collide, the court must seek a construction that harmonizes them both, especially where neither one logically trumps the other.) The applicable provisions of the Michigan Constitution and the Court of Claims Act were both adopted in 1963.

⁸ *Farrell v Unemployment Compensation Comm*, 317 Mich 676; 27 NW2d 135 (1947).

⁹ Const 1941, art 6, § 22.

¹⁰ Const 1963, art 11, § 5.

¹¹ Const 1909, art 16, § 7.

Legislature's authority and recognized the Civil Service Commission's constitutional jurisdiction over claims such as the one filed in *Farrell*.¹²

For these reasons, this Court should rely upon the more recent cases holding that the Court of Claims, created by the Legislature, has no jurisdiction over State classified employees' complaints that challenge the Civil Service Commission's authority or involve interpretations of civil service rules and regulations.¹³ Significantly, the Court of Appeals in *Bays v Department of State Police* distinguished *Farrell*, noting that where interpretations of civil service rules are presented, the Court of Claims has no authority to exercise supervisory power over the Civil Service Commission.¹⁴ Moreover, this Court has issued numerous decisions since 1963 that clearly establish the plenary authority of the Civil Service Commission over the terms and conditions of employment and its power to establish procedures for resolution of a State classified employee's dispute.¹⁵

II. Plaintiff's employment is central to the jurisdictional question.

Ms. Kroon-Harris claims that her employment is "immaterial" to the resolution of this jurisdictional issue. (Br Opposing Def's Application for Leave to Appeal, p 8.) To the contrary, it is the very reason she was eligible for the long term disability (LTD) benefits that are the

¹² Const 1963, art 4, § 48.

¹³ See, e.g., *Bays v Dep't of State Police*, 89 Mich App 356, 362-363; 280 NW2d 526 (1979) (holding that the Court of Claims did not have jurisdiction to determine whether police officers and classified employees were entitled to compensation for standby time, and recognizing that allowing the Court of Claims to review a state agency's decision would require all such appeals to be brought in the Court of Claims, in contravention of the plain intent of the Legislature that judicial review of state administrative agencies be available in the circuit court); *James v Michigan Dep't of Mental Health*, 145 Mich App 229, 231-33; 377 NW2d 824 (1985) (holding that to adopt the plaintiff's argument that she could file her action challenging termination of her State classified employment in the Court of Claims would mean that a union and a state agency could "abrogate the constitutionally mandated jurisdiction of the Commission and confer subject matter jurisdiction on a court which otherwise does not have that jurisdiction).

¹⁴ *Bays* at 89 Mich App at 360.

¹⁵ See, e.g., *Viculin v Dep't of Civil Service*, 386 Mich 375; 192 NW2d 449 (1971).

subject of this litigation, and is central to this Court's resolution of the jurisdictional issue. Michigan has repeatedly—and correctly—stated that Ms. Kroon-Harris's LTD benefits are available only to classified employees. Her LTD benefits were part of the compensation package provided to State classified civil service employee, and only State classified civil service employees are able to take advantage of that compensation package.

It is true that Michigan offers LTD benefits to other select groups including "unclassified [State] employees who participate in a formal sick leave plan as described for classified employees, and employees of the Michigan Court System and County Juvenile Court Officers who have an appointment of at least 720 working hours duration."¹⁶ But Michigan's decision to offer the LTD Plan to members of these select groups is not relevant to the LTD benefits that Ms. Kroon-Harris receives contingent upon her State classified civil service employment. Unlike unclassified State employees or members of the judiciary, State classified civil service employees (such as Ms. Kroon-Harris) receive this compensation package only through the constitutional authority exercised by the Civil Service Commission.¹⁷

III. This Court's decision affects other pending LTD cases.

Ms. Kroon-Harris's claim is not the only dispute over LTD benefit eligibility currently at issue; this Court's decision as to what court has jurisdiction to review such claims, affects not only her claim but other cases involving plaintiffs who dispute similar administrative denials. Currently pending are the following claims:

¹⁶ "Long Term Disability and Income Protection Plan for State of Michigan Employees," October 1, 2002 booklet.

¹⁷ See Attachment 1, Civil Service Rule 5-11; Civil Service Reg 5.18.

- *Walker v Office of State Employer*, Court of Claims, No. 04-92-MZ. The trial court granted summary disposition in favor of the State Employer, and the Court of Appeals, in an unpublished opinion relying on its decision in *Kroon-Harris v State of Michigan*, reversed. The trial court never entered an order to hold the case in abeyance.
- *Lagow v State of Michigan*, Court of Claims, No. 05-114-MK. The trial court entered a stipulated order to hold the case in abeyance pending this Court's action in *Kroon-Harris v State of Michigan*.
- *Sweezer v State of Michigan*, Court of Claims No. 04-46-MK. This case is scheduled to go to trial in August of 2006. Plaintiff's LTD benefits were denied by the State's LTD third party administrator but Sweezer never pursued an appeal of this decision to the Office of State Employer, and thus, failed to exhaust the available administrative remedies.
- *Strachan v Office of State Employer*, Court of Claims No. 04-148-MK. This case is scheduled for trial in October of 2006. Plaintiff appealed to the OSE after the third party administrator denied benefits.
- *Spink v MDOC*, Court of Claims No. 04-60-MK. The trial court dismissed. The parties have agreed to stay the case pending a decision from this Court regarding Michigan's Application for Leave to Appeal in *Kroon-Harris v State of Michigan*.

IV. A holding that State classified employee benefits are contracts would affect not only future cases involving LTD benefits, but potentially all other benefits offered as part of Michigan's classified civil service employee compensation package.

Michigan offers a variety of benefits to State classified civil service employees. These benefits may require the employee and/or the State to pay a "cost" as determined by the Department of Civil Service,¹⁸ may require the State to retain final responsibility for the cost of all claims (self-funded),¹⁹ and may be subject to administrative review by the Civil Service Commission.²⁰

¹⁸ Civil Service Rule 5-11.3(b).

¹⁹ Civil Service Reg 5.18 Part 4 (B).

²⁰ Civil Service Reg 5.18 Part 4.

For instance, employees pay no "cost" for vision and employee life insurance benefits. An employee will be required to pay a "cost" for LTD benefits, State health and dental plans, health and dental maintenance organizations plans, and dependent life insurance benefits. Of these benefits, the following are self-funded: State health and dental plans, vision, group life insurance, and LTD benefits. Of these self-funded benefits requiring a "cost," at least one—the LTD cost—is directly tied to a condition of employment, the number of available sick hours. Other benefits are non-self-funded plans, such as those provided by health and dental maintenance organizations.²¹

The Commission established an administrative review process for disputes over these benefits.²² Not all disputes over these benefits come under civil service administrative review. Only decisions concerning the "group insurance plans"²³ are subject to expedited review by the Commission.²⁴ The Commission has established, by regulation, that neither it nor the State Personnel Director will consider any disputes over the dental or health maintenance organization benefits.²⁵

The Court of Appeals' erroneous holding potentially affects all disputes arising out of all these benefits. All of these benefits are part of the employee compensation package authorized

²¹ Historically, the Commission had authorized the State Employer to render an expedited administrative review of a classified employee's eligibility for LTD benefits. The current procedure allows for such review of employee complaints regarding group insurance benefit by the State Personnel Director. An employee aggrieved by director's final administrative decision may appeal the decision to the Civil Service Commission. Civil Service Rule 5-11 and Reg 5.18. Any questions concerning this administrative review process rest within the jurisdiction of the circuit court.

²² Civil Service Reg 5.18 Part 4(B)(C).

²³ Group insurance plans include State medical and dental benefit plans, vision benefit plan, life insurance plan, accidental death benefit plan and LTD benefits. Civil Service Rule 5-11.1(a).

²⁴ Civil Service Rule 5-11.1 (e)(1).

²⁵ Civil Service Reg 5-18 Part 4(C).

by the Civil Service Commission. Therefore, the fact that an employee may pay a "cost" is not relevant to determining the jurisdiction over State administrative reviews of decisions pertaining to these benefits. Similarly, the distinctions in the review process available to each benefit are not relevant because the Commission establishes and controls the administrative review process for all these benefits, even where it has authorized review elsewhere. The Commission may amend, alter, modify, or delete any one of these benefits at any time under its exclusive constitutional authority.

Moreover, thousands of employees are covered under these various plans, as October 2005 statistics demonstrate. For example, over 29,000 classified employees received State health care benefits, 17,000 cover their spouses, and almost 15,000 cover their children. Over 49,000 classified civil service employees are covered under the dental plan, over 30, 000 cover their spouses, and over 26,000 cover their children. More than 33,000 classified civil service employees elect dependent life insurance coverage. (See Attachment 2, Employee Benefits Division Internal Insurance Changes FY-06 Reports, run November 1, 2005.) Almost 48,000 classified civil service employees elect coverage under the LTD plan, a figure that represents approximately 91% of the classified civil service work force in the executive branch of government.²⁶

Under the Court of Appeals' erroneous holding, any one of these benefit-holders who is dissatisfied with some aspect of a benefit may seek to circumvent existing administrative procedures and file a claim in the Court of Claims. This would nullify the administrative procedures set up by the Civil Service Commission and require litigation of each claim and issue

²⁶ State of Michigan 26th Annual Workforce Report – Fiscal Year 2004-05, Section 2, Page 2-9, prepared by the Michigan Department of Civil Service, available on www.michigan.gov/mdcs.

in the Court of Claims. This new judicially created review process of administrative claims would disregard the expertise and experience of the benefit administrators who currently review benefit claims prior to judicial review. Additionally, if current administrative procedures are bypassed, *de novo* hearings for any compensation complaint will increase legal costs, delay the resolution of benefits issues, and overburden the Court of Claims with the litigation of these administrative benefit claims.

V. Apart from the jurisdictional issue, the Court of Appeals' holding leaves unresolved the applicable standard of review.

Although the central issue in this case is jurisdictional, the Court of Appeals' holding also affects the applicable standard of review by erroneously creating an open invitation for the Court of Claims to review administrative decisions *de novo*. Currently, any judicial challenge to a final decision arising out of Civil Service administrative process rests with the circuit court and is subject to limited review under Const 1963, art 6 § 28. The Court of Claims is a court of first impression and generally reviews cases *de novo* unless mandated to do otherwise. *De novo* review would offer no deference to previous administrative decisions, thus contravening the Civil Service Commission's administrative policies and procedures.

VI. *Guiles v Regents of the University of Michigan* is not dispositive because benefits offered to university employees cannot be compared to benefits offered to a full-time, State classified employees under Civil Service Commission authority.

Michigan's application discussed *Guiles v University of Michigan*,²⁷ as not binding on this Court and not dispositive because the Court of Appeals did not address jurisdiction. An additional consideration is that the *Guiles* Court had no occasion to examine the distinctions between the State of Michigan's grant of a compensation package to a classified employee through the Civil Service Commission, and the University of Michigan's offer of an LTD plan to

²⁷ *Guiles v Regents of the Univ of Michigan*, 193 Mich App 39; 483 NW2d 673 (1992).

its employees—an offer that does not involve the constitutional authority of the Civil Service Commission. Perhaps future cases will address whether LTD plans governed by a State university employer are contracts subject to jurisdiction in the Court of Claims, but that issue is not before this Court. *Guiles* is not applicable and certainly does not justify a potentially widespread dismantling of the Civil Service Commission's administrative review process.

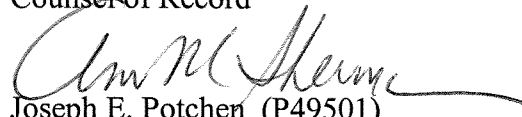
CONCLUSION AND RELIEF SOUGHT

Long-term disability benefits and other State classified civil service employee benefits are not contracts, and the Court of Claims has no jurisdiction over cases arising out of these benefits. The Court of Appeals' holding that jurisdiction is proper in the Court of Claims, potentially for *de novo* review, not only violates the Michigan Constitution but would create practical burdens on both the State and the judicial system. Accordingly, Michigan respectfully asks this Court to peremptorily reverse the Court of Appeals' holding that Plaintiff Donna Kroon-Harris's LTD benefit is a contract and jurisdiction is proper in the Court of Claims. Michigan asks that this Court dismiss Donna Kroon-Harris's claim.

Respectfully submitted,

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